In the High Court of Uttaranchal, at Nainital.

Appeal against Order No. 6/2001

1- Devi Prasad Purohit,
S/o Late Mukund Ram Purohit,

2- Km. Premlata, D/o Late Madan Mohan,

3- Master Manoj Kumar, S/o Late Madan Mohan,

4- Km. Prabha D/o Late Madan Mohan,
All R/o Vilalge Semigwarh,
Patwari Kshetra Bamoth, Tehsil Pokhari,
District Chamoli- appellants 2 to 4 under
the guardianship of their real uncle and natural
guardian Devi Prasad Purohit …Claimants/Appellants.

Versus

1- Shiv Prasad,

2- Devi Prasad,

3- Ram Prasad,

4- Kalika Prasad,

5- Shambhu Prasad

All above S/o late Chandramani,
R/o Village Devsthan, Patwari
Kshetra Pokhari, District Chamoli

6- Oriental Insurance Company through
its Branch Manager, University Gate
Branch Srinagar, Garhwal …Opp. Parties/Respondents.

Sri Rajendra Dobhal, Advocate for the appellants.
Sri Narain Singh Negi, Advocate for respondent Nos. 1 to 5.
Sri D.S. Patni, Advocate for the respondent No.6.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: May 10, 2006

This Appeal against Order under Section 173 of Motor Vehicle Act, has been filed against the judgment and award dated 17-11-2000, passed by M.A.C.T./District Judge, Chamoli, in M.A.C.P. No. 2/1998, Devi Prasad and others Versus Purva Devi and others.

2- Brief facts of the case, as per the claim petition, are that on 2-12-1997 deceased Smt. Deena alias Smt. Janki Devi along with her husband Madan Mohan and daughter Km. Pinki were returning to Karanprayag Semigwar riding in a truck No. U.S.Y. 3224 after

attending an engagement ceremony at Village Dewar Pokhari. When the offending truck reached near Udamanda it met to accident by the rash and negligent driving of the driver. All the persons including Smt. Janki Devi riding in the offending truck died in the accident. The claimants/appellants are the minor children of the deceased Smt. Janki Devi who have filed the claim petition under the guardianship of their uncle appellant Devi Prasad Purohit. The claimants/appellants alleged that at the time of accident the deceased Smt. Janki Devi was aged about 35 years and her monthly income was Rs.3,000/-. The claimants/appellants claimed compensation for Rs. 5,00,000/- in lieu of death of Smt. Janki Devi.

3- The respondents 1 to 5 were the co-owners offending truck. Respondent No.2 Devi Prasad filed written statement before the Tribunal. He admitted the accident. He alleged that the offending truck was registered in the name of his father Chandramani and after the death of Chandramani it was joint property of respondents 1 to 5 and at the time of accident the truck was being plied under the control of his brother respondent Shiv Prasad. It was also alleged that Madan Mohan husband of the deceased had hired the offending truck for contract work. The deceased was not a valid passenger in the truck. It was also alleged that the offending truck was insured with Oriental Insurance Company and at the time of accident had valid insurance.

4- The respondent No.6, Oriental Insurance Company filed its written statement and pleaded that the driver of offending truck was not having valid driving licence and fitness papers. It was also pleaded that the truck was not authorized to carry passengers hence the Insurance Company is not liable to pay compensation. The Insurance Company also alleged that the claim petition is bad for non-joinder of parties.

5- The other respondents in spite of service of notices did not come forward to contest the claim.

6- The Tribunal, on the pleadings of parties, framed the following issues for determination:-

(1) Whether Smt. Janki died in the accident on 2.12.1997 at 2.30 P.M. due to the rash and negligent driving of truck No. USY 3224, as alleged by the claimants?.

(2) Whether the offending truck was insured with Oriental Insurance Company and its driver was having valid driving licence and registration certificate?.

(3) To what amount of compensation, the claimants are entitled to get and against whom?.

(4) Whether the driver and the owner of the Truck have breached the conditions of the insurance policy, as alleged by the Insurance Company in para-19 of its W.S?.

(5) Whether the claim petition is bad for non-joinder of parties, as alleged by the Insurance Company in paragraph-23 of its W.S?.

7- The parties led oral and documentary evidence in support of their case. The claimants/appellants produced P.W.1 Devi Prasad and P.W.2, Faqurddin. The respondent No.6, Oriental Insurance Company did not adduce any evidence. However, respondent No.2, Devi Prasad produced himself as D.W.1 and also filed documentary evidence.

8- The Tribunal after perusing the evidence on record and having heard the counsel for the parties, allowed the claim petition and awarded compensation of Rs. 77,500/- to the claimants/appellants along with 10% per annum interest from the date of award till final payment, against the respondents 1 to 5, vide impugned judgment and order dated 17-11-2000.

9- Feeling aggrieved, the claimants/appellants have filed this appeal before this Court for enhancement of compensation.

10- Heard the learned counsel for the parties and perused the record.

11- It is to be seen first of all whether the accident took place on account of rash and negligent driving of the driver of offending truck in question or on account of some mechanical defect. The truck owner in his W.S. has pleaded that the accident had taken place on account of the mechanical defect in the truck due to which the truck driver also died at the spot. P.W.2, Fakuruddin has been

produced as an eye witness of the accident who has stated that he has a bakery shop at Semigwar and on the date of accident he had gone to Udamanda for selling the biscuits. He saw that a truck was being driven with rash and negligence and it fell in a Khud due to which five persons succumbed to injuries. This witness has stated that the truck fell in a river which was flowing deep in a Khud. There is nothing on the record which may indicate that the accident took place on account of some mechanical defect occurred in the truck. The factum of the accident is also established from the perusal of the first information report which was lodged by one Ram Prasad at Police Station on 2.12.1997. The post mortem report of the deceased Smt. Janki also indicates that she sustained injuries in this accident. Therefore it is held that accident took place on account of rash and negligent driving of truck No. USY 3224.

12- It is now to be seen whether the offending truck was insured with the Insurance Company on the date of accident or not.

13- The evidence on record shows that the tax of this vehicle was paid by the owner of the vehicle upto 31.12.1997. The truck in question was registered in the name of Chandramani who was the father of respondent Nos. 1 to 5. Paper No. 43-C which is available on the record, is the fitness of the vehicle and shows that it was renewed upto 17.12.1997. There is no document available on the record which may suggest that there was a renewal with regard to the fitness of the offending truck after 17-12-1997. But this does not affect the merit of this case as the accident took place on 2.12.1997 and on that date there was a certificate in favour of the offending vehicle with regard to its fitness. The Insurance Policy which is available on the record shows that the truck in question was insured w.e.f. 26.5.1997 to 25.5.1998 therefore it is quite clear that on the date of accident the truck in question was insured with Oriental Insurance Company.

14- The next important question which is involved in this case is whether the driver of the truck was having valid driving licence at the time of the accident and in case if the driver was not having valid driving licence at the time of the accident, as has been pleaded by the Insurance Company in the W.S., then would it be the

liability of the Insurance Company to pay the amount of compensation or the same would be paid by the insured, i.e., the owner of the vehicle.

15- The record reveals that photo copy of the driving licence is available on record as paper No. 45-C which has been filed by the insured of the vehicle and it shows that Mahesh Singh S/o Shyam Singh who was the driver of the vehicle had a valid driving licence for plying the heavy vehicle for a period of 30-6-96 to 29-6-97. There is nothing on record which may indicate that the driving licence was further renewed by any competent authority. Therefore, it cannot be said that the driver of the offending truck was having a valid driving licence on 2.12.1997, i.e. the date of accident.

16- The Three Hon'ble Judges Bench of Supreme Court in a case **Malla Prakasarao Versu Malla Janaki and others** reported in **(2004) 3 Supreme Court Cases 343** has held as under:-

> "**1.** It is not disputed that the driving licence of the driver of the vehicle had expired on 20-11-1982 and the driver did not apply for renewal within thirty days of expiry of the said licence, as required under Section 11 of the Motor Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. Accordingly to the terms of the contract, the Insurance Company has no liability to pay any compensation where an accident takes place by a vehicle, driven by a driver without a driving licence. In that view of the matter, we do not find any merit in the appeal."

17- A careful consideration of the cited judgment of the Hon'ble Apex Court, we are of the view that the Tribunal has rightly concluded its finding by observing that the Insurance Company cannot be held to be liable for making the payment of compensation to the claimants. It is the liability of the insured, i.e. the respondent Nos. 1 to 5 to pay the amount of compensation to the claimants/appellants. It is worthy to mention here that the owner of the vehicle have not challenged the finding of the Tribunal in any manner before this Court.

18- The another aspect of the matter for consideration is the amount of compensation to be awarded in favour of the claimants. The Tribunal has awarded an amount of Rs. 77,500/- as compensation in favour of the claimants. The method, by which the calculation has been made by the Tribunal, appears to be wrong. At the time of the accident the age of the deceased, as per the claim petition, as well as post mortem report, was 35 years. It has been mentioned in the claim petition that the deceased was a housewife and was doing the work of agriculture and her monthly income was Rs. 3,000/-. However, the Tribunal has held that the specific income of the deceased cannot be assessed but it has held that as the deceased was a house-lady hence her contribution towards the family cannot be ignored and accordingly assessed her income @ Rs. 6,000/- per annum after due deduction towards her personal expenses. The age of the deceased at the time of accident was 35 years, therefore, the multiplier of 17 adopted by Tribunal is just and adequate. But the approach of the Tribunal in deducting a further amount of 1/4th appears to be impracticable. There is no reason for further lump sum deduction of 1/4th amount of compensation. The finding of the Tribunal in this regard is wrong and against the settled provision of law. To our opinion the claim petition is liable to be decreed for an amount of Rs. 1,02,000/- in favour of the claimants/appellants, after adopting a multiplier of 17 on the annual income (17 x 6000/- = 1,02,000/-).

19- The Tribunal has also directed that the claimant/appellant No.1 Devi Prasad is not entitled for any compensation, but the claimants/appellant Nos. 2, 3 and 4 being minor daughters and son of the deceased are legal heirs and dependents, hence entitled for the amount of compensation. The amount of compensation so awarded in favour of the claimants/appellant Nos. 2, 3 and 4 shall be distributed in three equal shares to each of the claimants/appellant Nos. 2, 3 and 4, who are the minor daughters and son of deceased Smt. Janki Devi. The amount shall be deposited in fixed deposit in some nationalized bank for the period till the minors attain their age of majority.

20- In view of assessment of evidence on record, we partly allow the appeal and modify the impugned judgment and award dated 17-11-2000 passed by the M.A.C.T., Chamoli in M.A.C.P. No. 2/1998 up to this extent that the claimants/appellant Nos. 2, 3 and 4 are entitled for an amount of Rs. 1,02,000/- as compensation. The amount of compensation shall be payable by respondent Nos. 1 to 5 as has been directed by the Tribunal.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB